

1-11-2017

## State v. Loffer Respondent's Brief Dckt. 44450

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44450
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-2015-3464
	)	
JACOB LOGAN LOFFER,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Loffer failed to establish that the district court abused its discretion by denying his Rule 35 motion for reduction of his unified sentence of seven years, with two and one-half years fixed, imposed following his guilty plea to grand theft?

Loffer Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Loffer pled guilty to grand theft and the district court imposed a unified sentence of seven years, with two and one-half years fixed, and retained jurisdiction. (R., pp.37-41.) Approximately five months later, after the district court received “a very poor rider review” report, it continued to retain jurisdiction and returned Loffer to the Department of

Correction to complete additional programming. (10/21/15 Tr., p.27, Ls.5-6; R., pp.45-47.) Approximately six months later, Loffer received a recommendation for relinquishment and the district court subsequently relinquished jurisdiction. (R., pp.49-53.) Loffer filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.54-55, 58-62.) Loffer filed a notice of appeal timely only from the district court's order denying his Rule 35 motion. (R., pp.63-65.)

Loffer asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence in light of his claim that he is a "minimum security classification." (Appellant's brief, pp.3-4 (citing R., p.54).) Loffer has failed to establish an abuse of discretion.

In State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007), the Idaho Supreme Court observed that a Rule 35 motion "does not function as an appeal of a sentence." The Court noted that where a sentence is within statutory limits, a Rule 35 motion is merely a request for leniency, which is reviewed for an abuse of discretion. Id. Thus, "[w]hen presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." Id. Absent the presentation of new evidence, "[a]n appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence." Id. Accord State v. Adair, 145 Idaho 514, 516, 181 P.3d 440, 442 (2008).

Loffer did not appeal the judgment of conviction in this case. The Department of Correction's decision with respect to Loffer's security classification while incarcerated does not fall under the purview of the district court's discretion, nor is it "new" information

that entitles Loffer to a reduction of sentence, particularly because Loffer failed to provide any evidence to support his claim and he did not provide any reason as to why his security classification merited a sentence reduction. The mere statement that Loffer 'is now minimum security classification' did not require the district court to infer that Loffer previously had a higher security classification. Even if it did, Loffer provided no information to indicate that such a reduced security classification was based on his good conduct.

Loffer correctly notes that he "received multiple formal and informal disciplinary sanctions" during his rider; however, a minimum security classification does *not*, in and of itself, indicate that Loffer's behavior improved following his rider. (Appellant's brief, p.4.) During Loffer's period of retained jurisdiction, he incurred three Class C DOR's, one infraction, one incident report, 10 verbal warnings, and 13 written warnings. (PSI, pp.4, 19-20.<sup>1</sup>) According to the Idaho Department of Correction (IDOC) Classification Scoring form, Class C DOR's and lesser infractions do not affect an inmate's classification score. (See <https://www.idoc.idaho.gov/content/policy/822>, pp.17-18 (Appendix A).) As such, despite the fact that Loffer's disciplinary actions represent extremely poor institutional behavior, none of the violations would have counted toward his security classification score and, therefore, would not have raised or lowered his security classification. (Appendix A.) Because Loffer could have continued to conduct himself (in prison) in the same abysmal manner that he did while on his rider *without*

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file "Loffer 44450 psi.pdf."

such poor behavior having any effect on his security classification, it cannot properly be inferred that a minimum security classification was the result of *improved* behavior.

Furthermore, even assuming that Loffer did display acceptable behavior in the mere two months following the district court's relinquishment of jurisdiction, this would not outweigh Loffer's complete disregard for institutional rules throughout the preceding *11 months* that he was on his rider. Loffer's sentence was reasonable at the time it was imposed, and his ongoing abysmal conduct in the retained jurisdiction program did not merit a reduction of sentence. The district court considered all of the relevant information and reasonably determined that a reduction of sentence was not appropriate, noting that Loffer committed the instant offense "just a few months after [he] was given the opportunity for probation" in a prior felony case, and stating, "The Court finds that a two and one-half (2½) year fixed sentence for Grand Theft, is lenient considering the facts of this crime and is well within the statutory sentence guidelines." (R., pp.60-61.) Loffer has not shown that he was entitled to a reduction of sentence, particularly in light of his history of disregarding the law, the terms of community supervision, and institutional rules. Given any reasonable view of the facts, Loffer has failed to establish that the district court abused its discretion by denying his Rule 35 motion.

Conclusion

The state respectfully requests this Court to affirm the district court's order denying Loffer's Rule 35 motion for a reduction of sentence.

DATED this 11th day of January, 2017.

\_\_\_\_\_  
/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 11th day of January, 2017, served a true and correct copy of the attached RESPONDENTS BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

\_\_\_\_\_  
/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

## APPENDIX A

Control Number: 303.02.01.001	Version: 7.0	Title: Classification: Inmate	Page: 17 of 19
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Functional Roles and Responsibilities	Step	Tasks
Facility Head	3	<ul style="list-style-type: none"> <li>Within three working days of the notification, enter the CIS classification screen, and consider the override recommendation.</li> <li>If the override requires approval by the Prisons Division chief (or designee), select the custody level you recommend, and notify the Prisons Division chief (or designee) or if the placement is at a CWC, the Division of Education, Treatment, and Reentry, reentry manager <i>via email</i>.</li> <li>If the override decision is made at the facility head level, accept or reject the recommendation and assign the final custody level.</li> </ul>
Prisons Division Chief Or Reentry Manager (or designee)	4	<ul style="list-style-type: none"> <li>Enter the CIS classification screen, determine the inmate's final custody level, and complete the classification process.</li> <li>Notify the classification staff via email that the classification is ready for service.</li> </ul>
Case Manager or Similar Staff	5	Enter the CIS classification screen and print two copies of the classification.
	6	<ul style="list-style-type: none"> <li>Meet with the inmate, serve one copy of the reclassification to the inmate, and explain the reclassification assignment and placement procedures.</li> <li>Forward one copy of the reclassification to records staff.</li> </ul>
Records Staff	7	File the printed reclassification in the inmate's central file.

## 12. Audit Procedures

The classification manager (or designee) will conduct monthly quality assurance by reviewing classifications and/or reclassifications and reporting findings to the Prisons Division chief, deputy chiefs and Division of Education, Treatment and Reentry reentry manager. Quality assurance may include researching inmate records, PSI reports, disciplinary history, detail reports etc. to ensure that classifications are being correctly completed. The classification manager (or designee) will provide monthly statistics to leadership for management analysis.

The Prisons Division will conduct annual operational audits to monitor facility implementation, consistency, and compliance with this SOP.

## 13. Classification Scoring

Category 1: Severity of Current Offense (manual data input)	
High Severity	9
Low Severity	1
Category 2: Escape History (manual data input)	
Conviction for escape or attempted escape from adult secure facility within the last 10 years	10
DOR for escape/attempted escape from adult secure facility within the last 10 years	7



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Conviction/ DOR for escape/walk-away or attempted escape/walk-away from a facility without a secure perimeter in the last 5 years	4
None	0
Category 3: Severity of Prior Felony Convictions (manual data input)	
High Severity (initial)	5
High Severity (reclassification)	3
Low Severity (initial)	1
No Prior Convictions (initial)	0
Low Severity or No Prior Convictions (reclassification)	0
Category 4: Current Age (auto populated)	
< 23	3
24 – 31	2
32 – 38	1
39 – 50	0
> 51	-1
Institutional Behavior (auto populated)	
Class A DOR, level 1 enhancement, within the last 5 years	25
Class A DOR, level 2 enhancement, within the last 3 years	23
Class A DOR, no enhancement, within the last 12 months	20
Class B DOR within the last 12 months	7
Class C DOR within the last 12 months	0
No DOR (Class A, B, or C) within the last 12 months	-1
Proximity to Release (auto populate) *Reclassification Only*	
High-risk Crime:	
<ul style="list-style-type: none"> <li>Has at TPD or FTRD within three (3) years or</li> <li>Has a PHD within three (3) years and is within five (5) years of FTRD</li> </ul>	-9
Life Sentence:	
<ul style="list-style-type: none"> <li>Has a TPD within three (3) years</li> </ul>	-9
Adjusted Custody (auto populated)	

#### Scoring Cutoffs for Initial and Reclassification

Initial Classification	
Close	17 or more
Medium	5 to 16
Minimum	4 or less

Reclassification	
Close	20 or more
Medium	7 to 19
Minimum	6 or less

#### DEFINITIONS

**Detainer:** A warrant or hold placed against an inmate in a federal, state, county, or city jail, which notifies the holding authority of the intention of another jurisdiction to take custody of the inmate when he is released.

**Non-secure Perimeter:** A perimeter that is not armed. (Pocatello Women's Correctional Center [PWCC] does have a non-secure perimeter, but it is considered a secure facility.)

**Secure Facilities:** The Idaho Correctional Center (ICC), the Idaho Correctional Institution-Orofino (ICIO), the Idaho Maximum Security Institution (IMSI), the Idaho State Correctional Institution (ISCI), and the Pocatello Women's Correctional Center (PWCC).